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**From:** Mutter, Andrew [mutter.andrew@epa.gov]  
**Sent:** 1/31/2019 9:58:53 PM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]  
**Subject:** FW: Daily News Clips, 1/31/2019

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**From:** Sauerhage, Maggie  
**Sent:** Thursday, January 31, 2019 2:58:50 PM (UTC-07:00) Mountain Time (US & Canada)  
**To:** AO OPA OMR CLIPS  
**Subject:** Daily News Clips, 1/31/2019

**Acting Administrator**

[Huffington Post: Coal Baron Cuts Ties With Lobbying Firm As Ex-Lobbyist Andrew Wheeler Ascends At EPA](#)  
[Inside EPA: Wheeler's Minimal Answers To Senators Offer Few Hints On EPA's Plans](#)  
[New York Times: Trump's Nominee for the E.P.A.](#)

**Car Emissions**

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**Chemicals**

[Chemical Watch: Methylene chloride, NMP products remain at major US retailers](#)  
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[E&E News: Lawmakers hopeful they can avert another shutdown](#)  
[E&E News: Lawmakers introduce water, wildlife, disaster bills](#)

**Drinking Water**

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**Enforcement**

[E&E News: Sunoco hit with \\$5.4M penalty for oil spills](#)

**Hydraulic Fracturing**

[E&E News: N.J. governor pushes for broader ban in Delaware River Basin](#)

**PFAS**

[Inside EPA: EPA Faces New State Pressure To Tighten Assessment Of PFAS Risks](#)

**Huffington Post: Coal Baron Cuts Ties With Lobbying Firm As Ex-Lobbyist Andrew Wheeler Ascends At EPA**  
[https://www.huffingtonpost.com/entry/murray-andrew-wheeler\\_us\\_5c520cc1e4b093663f5ad9de](https://www.huffingtonpost.com/entry/murray-andrew-wheeler_us_5c520cc1e4b093663f5ad9de)  
**By Alexander C. Kaufman**

1/31/2019

Coal giant Murray Energy cut ties with its longtime lobbying firm shortly after President Donald Trump announced plans to nominate Andrew Wheeler, the firm's former lobbyist, to be the next Environmental Protection Agency administrator.

The country's largest privately held coal producer, run by the bombastic coal baron Bob Murray, appears to have ended its relationship with Wheeler's former lobbying firm, Faegre Baker Daniels Consulting, according to a lobbying termination notice buried last week in Politico Influence, a newsletter tracking K-Street contracts. The termination took effect at the end of last year.

The announcement came six days after Wheeler, the acting EPA administrator and nominee to fill the role permanently, testified before a Senate committee in the first step of what's expected to be an easy confirmation process to be the nation's 15th EPA chief.

The timing could be a coincidence, a cost-cutting measure for a company facing significant headwinds going into the new year. And, technically, the law firm could maintain Murray Energy as a client while not reaching the threshold necessary to report its activities as a lobbyist. But, to some, the contract termination signaled what The New Republic this month dubbed Murray's "nearly complete takeover" of the EPA and raises new questions about Wheeler's potential conflicts of interest.

"Murray Energy has cut out the middleman," Judith Enck, a former administrator for the EPA region that includes New York and Puerto Rico, told HuffPost in an interview Monday. "They've got their pro-coal guy in the driver's seat at the EPA."

The EPA declined to comment. Reached by phone, Murray Energy asked HuffPost to send written questions about its relationship with Faegre Baker Daniels via email, but did not reply to three follow-up emails. Faegre Baker Daniels did not respond to a request for comment.

The past two years delivered Murray an unprecedented string of political victories, even as coal consumption hit a 39-year low and closures of coal-fired plants continued. An early and vocal Trump supporter, the Ohio-based chief executive donated \$300,000 to the president's inauguration and another \$1 million to a pro-Trump political action committee, according to Center for Responsive Politics data. In March 2017, Murray drafted a wishlist of policies submitted in the form of memos to the Energy Department — leaked photos show Wheeler, then a lobbyist, sitting beside the coal executive as he hugged Energy Secretary Rick Perry — and to Vice President Mike Pence.

Murray's requests primarily targeted the EPA, urging draconian staff cuts, gutting a mercury regulation and reversing a bevy of standards on pollution ranging from ozone to toxic coal ash to planet-warming carbon dioxide emissions. Of eight EPA policies Murray asked to be changed, the Trump administration took action on six, most of which were carried out since Wheeler took charge of the agency, Mother Jones reported.

In a telling moment, Wheeler proposed in December the rollback of an Obama-era rule requiring coal-fired plants to reduce carbon dioxide emissions in the midst of the year's biggest global climate summit.

One reason Murray Energy may have terminated its contract with Faegre Baker Daniels is that, under the Trump administration's own ethics pledge, officials cannot meet with former employers for two years after taking office.

"It's possible that if Murray Energy goes to another firm, they could get a meeting before Wheeler personally," said Virginia Canter, chief ethics counsel at the nonpartisan watchdog Citizens for Responsibility and Ethics in Washington. "Another lobbying firm, if that's where they went, might be in a better position to move forward on Murray Energy's more immediate interests."

Murray Energy has cut out the middleman. They've got their pro-coal guy in the driver's seat at the EPA."  
Judith Enck, former regional EPA administrator

The ethics pledge might not be an impervious firewall. Two weeks ago, CREW filed a complaint with the EPA's Office of the Inspector General alleging that Wheeler may have violated his ethics pledge by participating in matters on which he previously lobbied and by holding meetings with his former clients. The EPA called the allegation "baseless."

But Wheeler's two decades working for Murray became a sticking point at his confirmation hearing before the Senate Environment and Public Works Committee, where Sen. Sheldon Whitehouse (D-R.I.) criticized a "sweet regulatory relationship" between the coal executive and the Trump administration.

"I've worked with a career ethics officials from day one," Wheeler said at the hearing. "And I continue to consult with the career ethics officials on a regular basis."

It's difficult to determine how Murray's business is doing because it's privately held and doesn't publicly report earnings, but there are some signs indicating financial distress. In April, Murray Energy warned that utility giant FirstEnergy Corp.'s decision to close bankrupt coal-fired power plants would cost "thousands of American jobs" in mining. The company started negotiating with bondholders last spring as it began feeling the squeeze of interest payments on \$2.8 billion in debt plus hundreds of millions of dollars in health and other benefits to retired coal miners, The Wall Street Journal reported last year.

In October, FirstEnergy announced plans to postpone the retirement of the Pleasants Coal Plant in West Virginia from 2019 to 2022. But, in December, a federal bankruptcy judge approved a contract settlement between Murray Energy and FirstEnergy.

The financial woes "can't be helping Murray in whatever it's doing," Steve Piper, an energy analyst at S&P Global, said by phone. "The point's well taken that Murray himself has lobbied the administration and Andrew Wheeler, his former lobbyist, is at the EPA."

#### **Inside EPA: Wheeler's Minimal Answers To Senators Offer Few Hints On EPA's Plans**

<https://insideepa.com/daily-news/wheelers-minimal-answers-senators-offer-few-hints-epas-plans>

**By Doug Obey & Dave Reynolds**

**1/30/2019**

Acting EPA Administrator Andrew Wheeler's answers to environment panel senators' questions ahead of his confirmation vote adopt a minimal approach offering few hints on EPA's pending regulatory agenda, evading specific responses or commitments on a host of major policies including rollbacks of Obama-era rules.

Drinking water is among the only topics where the acting agency chief offers a greater level of detail in his responses, and there he is suggesting the 35 day government shutdown will further delay rules seeking to bolster drinking water protections, including a long-awaited update to the agency's 1991 lead and copper rule (LCR) and a proposed drinking water standard for the common drinking water contaminant perchlorate.

The Senate Environment & Public Works Committee (EPW) held its confirmation hearing on Jan. 16 for Wheeler's nomination to head the agency permanently. At the hearing, he similarly avoided sweeping statements or pledges on pending rules such as rollbacks of Obama EPA climate and water policies.

As part of the confirmation process senators send nominees questions for the record on a host of topics, and EPW ranking member Sen. Tom Carper (D-DE) late Jan. 29 released Wheeler's responses to his questions.

The answers point to the difficulties Democrats in the House and Senate are likely to have in extracting details on key deregulatory initiatives. But they give EPW Democrats the chance to state for the record numerous concerns over the Trump EPA's agenda, offering potential hints at future political and legal fights over those initiatives.

"We will be developing responses to the issue you raise here as part of our joint effort to finalize this important rule," Wheeler says in what becomes a typical response to one of numerous Carper queries on a pending EPA and Department of Transportation (DOT) plan to freeze vehicle fuel economy and greenhouse gas standards.

Carper had sought explanation of internal EPA staff concern, outlined in an already public document in EPA's rulemaking docket, including that a corporate average fuel economy model DOT has used in support of the Trump administration's proposed freeze is "unusable in its current form for policy analysis."

"As work on this rule is ongoing, it would not be appropriate for me to comment on whether, as you put it 'each of these flaws were fully remedied before the rules were proposed,'" Wheeler said.

Wheeler uses similar or functionally identical language in response to over half a dozen other Carper queries related to EPA staff concerns that DOT's modeling improperly generates assumed benefits from a standards freeze, including from overly pessimistic assumptions on technology cost; unjustifiable changes in projections of miles driven under fuel economy standards that generate projections of lives saved under the proposed freeze, and other cited flaws.

In one response on the alleged safety benefits of the regulation, Wheeler replaces an earlier comment he made during his nomination hearing before the panel -- in which he touted a thousand lives saved annually under the vehicle plan -- with a more generic comment that DOT is "taking the lead with respect to the safety implications at issue."

### Vague Responses

Wheeler's vague responses come amid every sign that EPA's policies are at odds with both those of the Obama administration and Hill Democrats on a range of issues, including mercury pollution. EPA has proposed to undo the cost-benefit finding underpinning the Obama-era mercury and air toxics standards for power plants, a move environmentalists fear could help a legal fight to undo the entire regulation.

"[T]he agency's leadership isn't denying that mercury is a dangerous neurotoxin or that more kids won't be harmed -- they just don't seem to care," former EPA chief Gina McCarthy wrote in a Jan. 29 opinion piece for The Hill. "That's a failure of political and moral leadership that puts partisanship ahead of governing for the benefit of all Americans."

Carper in his written queries had sought several answers related to the agency's proposed determination that mercury controls on utilities are no longer "appropriate or necessary" -- including whether the plan would ultimately cause utilities to remove existing emissions control if the underlying policy rationale for the controls disappears.

"EPA is not proposing to rescind or weaken the [mercury and air toxics] standards that control mercury emissions," writes Wheeler, while at multiple points referring Carper to supporting documentation for its pending plan without opining on their details.

Wheeler at another point appears more guarded in his written answers to Carper than during his answer to Sen. Ben Cardin (D-MD) during Wheeler's nomination hearing on the same topic.

At the EPW hearing, the acting agency chief said on the mercury issue, "I honestly do not believe that that equipment will be turned off or removed under our [mercury] proposal," as referenced in a Carper query.

Wheeler in the written response says EPA's proposal would not rescind or weaken the [mercury air toxics] standards. Otherwise, EPA has not established a position on the speculative issue your question raises."

The issue of whether the United States will ratify the Kigali treaty on control of hydrofluorocarbons -- and the projected benefits of such controls -- is another issue on which Wheeler keeps his options open, in response to a query from Carper on when EPA will release an internal cost-benefit analysis on the issue. Any analysis of costs and benefits by EPA is still undergoing review and includes information that relates to a pending or contemplated executive action and is therefore deliberative and pre-decisional.

## Regulatory Delays

One of the only sections of the response document where Wheeler offers greater specifics is on drinking water rules, and his answers largely detail delays for several pending policies.

In response to questions from Carper, Wheeler says EPA intends to send proposed revisions to the LCR for White House Office of Management & Budget (OMB) review this Spring and to finalize a rule on use of lead-free piping for drinking water this year. "The EPA intends to maintain these rulemaking schedules; however, the agency will continue to evaluate the schedules in light of the government shutdown and make necessary adjustments," Wheeler writes.

Nonetheless, Wheeler's most recent proclamations in response to Carper's questions appear to further delay the LCR, calling it "a complicated rulemaking," as well as other drinking water rules.

Prior to the shutdown, Wheeler told a Dec. 19 news conference announcing an agency plan for reducing children's exposures to lead that the agency planned to propose the LCR revisions, expected last summer, this spring. But the response to Carper suggests a longer delay as OMB review of the proposal takes roughly 90 days.

The delay announced late last year came after Wheeler said at a Nov. 28 Washington Post live event that EPA would propose the LCR update in early in 2019. While the agency had planned to propose changes last year, Wheeler said the delay would allow the agency to better prioritize replacing the leakiest lead pipes first.

While EPA had planned to finalize the rule on lead-free piping in June 2019, Wheeler tells Carper that rule should be finished sometime in 2019.

Wheeler also suggests the shutdown may delay a proposed drinking water standard for the rocket fuel contaminant perchlorate, despite an April 30 court-ordered deadline for proposing the standard.

A federal district judge in December granted EPA's request for an additional six months -- until April 2019 -- to propose a drinking water standard for perchlorate to consider peer reviewers' recommendations and improve scientific tools that the agency is using to support the rulemaking.

The order in *Natural Resources Defense Council v. EPA* reiterated environmentalists' grudging agreement that EPA is not prepared to develop the proposed perchlorate rule, based on a series of delays in developing and peer reviewing a complicated model that is a central component of EPA's analysis for the rule.

While the court said it expected EPA to work diligently to meet its revised deadline, Wheeler suggests in his response to Carper that the shutdown allows for further delay.

"The consent decree includes a provision that automatically extends deadlines in the event of certain circumstances outside the reasonable control of the EPA, such as lapses in government funding," he adds.

### **New York Times: Trump's Nominee for the E.P.A.**

**A former agency official praises Andrew Wheeler, a career employee, for his qualifications and character.**

<https://www.nytimes.com/2019/01/31/opinion/letters/wheeler-nominee-epa.html>

**1/31/2019**

To the Editor:

Re "This Coal Lobbyist Should Not Run the E.P.A.," by Dominique Browning (Op-Ed, nytimes.com, Jan. 14) regarding President Trump's nominee to lead the Environmental Protection Agency:

Unlike the first E.P.A. administrator in the Trump administration, Andrew Wheeler has decades of experience working on environmental issues as a career E.P.A. employee and as the Senate Environment Committee's staff director. Senators and congressional staffers, both Republicans and Democrats, know him well from his long tenure, and while they may disagree with him, all like and respect him because of his knowledge, experience and approach.

Since becoming acting administrator, Mr. Wheeler has been an effective leader at the agency. He is committed to protecting the environment and has the respect of the career staff, but he is also committed to correcting the regulatory overreach that occurred under the previous administration. Mr. Wheeler understands how the regulatory process works and the type of effort that is required to develop effective and legally defensible regulatory reforms.

Opponents can certainly challenge the administration's approach to environmental issues, but attacks on Mr. Wheeler's character and qualifications are beyond the pale.

Jeff Holmstead

Washington

The writer served as the Environmental Protection Agency's air administrator from 2001 to 2005.

### **The San Diego Union-Tribune: Talks to avoid a messy legal fight over California's emissions rules appear stalled**

<https://www.sandiegouniontribune.com/news/us-politics/la-na-pol-california-trump-car-emissions-20190131-story.html>

**By Anna M. Phillips**

**1/31/2019**

Talks between the Trump administration and California over rules requiring automakers to steadily decrease car emissions are no closer to reaching a deal than when they began months ago, setting the stage for a protracted legal battle.

Behind the scenes, negotiations have been largely cosmetic and unproductive, according to officials in Washington and California with direct knowledge of the talks.

Unlike the Obama-era negotiations that led to the creation of national fuel efficiency and emissions standards, the current talks have lacked detailed technical analysis and regular input from the agencies' career staff, according to the officials, who declined to be named, citing the sensitivity of the discussions.

Instead, administration officials have repeated the same set of talking points or steered the conversation to small talk, they said.

Several officials briefed on the discussions said they were reluctant even to describe them as negotiations, given the lack of substance.

And partly because of the 35-day partial government shutdown, the last discussion between the Environmental Protection Agency, Department of Transportation and California Air Resources Board took place nearly two months ago on Dec. 4, according to EPA spokeswoman Molly Block.

"I've seen a lot of going through the motions," said Jody Freeman, a Harvard environmental law professor who is not involved in the current talks but worked on the first set of national vehicle emissions standards under President Obama. During those negotiations, Freeman said she required agency staff with technical expertise to be deeply involved.

"I haven't seen, through this entire process, the signs of a real push by the auto industry or the administration to get to agreement [with California]," she said.

California and senior administration officials began far apart and there they remain.

Last year the EPA announced plans to relax fuel economy and tailpipe emission rules put in place during the Obama administration that were designed to cut down on planet-warming greenhouse gases. California vowed to plow ahead, holding tight to its legal authority to maintain stricter standards.

Despite their differences, the two sides began talking quietly last year in an attempt to avoid a court battle that could leave automakers subject to conflicting regulations and divide the market between states that follow California's requirements for cleaner cars and states using the Trump administration's scaled-back standard.

Thirteen states and the District of Columbia have adopted California's rules, accounting for nearly 40% of all new vehicles sold in the U.S., according to the Union of Concerned Scientists, a nonprofit group.

During his confirmation hearing earlier this month, Acting EPA Administrator Andrew Wheeler said that he was working to reach a compromise with California. He said he had met three times with the chair of the California Air Resources Board, Mary Nichols.

"We've had numerous conversations. My staff has worked with her staff for months now," he told the Senate Environment and Public Works Committee. "We would love to have a 50-state solution."

However in a statement to The Times, Nichols sounded a note of deep frustration with Wheeler.

She said that in abandoning the emissions standards adopted by the previous administration and attacking California's authority to enforce its own rules, the acting administrator had "failed to use his authority to protect the health and welfare of all Americans."

"This is a blow not just to California but to all the states who follow our regulatory approach," Nichols said. "States are prepared to defend our rights against federal overrides by all legal means."

Carbon dioxide emissions from vehicles already rank among the major contributors to climate change and they are expected to account for an even greater portion in the future. For this reason, the national fuel efficiency standards aimed at getting the nation's cars and trucks to average more than 50 miles per gallon by 2025 are often considered one of the country's most effective steps to fight global warming.

In August, the Trump administration unveiled a proposal to freeze mileage targets after 2020. In addition to ending California's unique authority to set its own, tougher greenhouse gas emissions standards, the plan would nullify the state mandate that automakers sell a certain number of electric vehicles.

Automakers, who had complained that the Obama-era regulations were too costly, asked the Trump administration to relax them. But even they were caught off guard by the aggressiveness of the proposal, and some have since advocated for a more moderate approach in hopes of avoiding a lengthy legal battle.

Still, it remains unclear how forcefully automakers have pushed back against the administration's plans.

California officials have proposed that if the current fuel efficiency rules remain in place through 2025, they would be willing to make it easier for automakers to meet those requirements by taking advantage of existing loopholes. In exchange, the Trump administration would have to agree not to challenge the state's power to set its own pollution standards.

According to people with knowledge of the talks, agency officials have not responded to this proposal.

During Wheeler's nomination hearing, Sen. Thomas R. Carper (D-Del.), the top Democrat on the committee, said he had "heard that the Trump administration now plans to finalize a 0.5% annual increase in the stringency of the standards, a rate that is 10 times weaker than the current rules."

EPA officials have said they are still working on a final draft of the rules.

California has already sued the Trump administration to block the EPA's efforts to weaken the existing standards. And if talks fail, more litigation inevitably will follow, reviving old arguments about whether California has the legal authority under the Clean Air Act to set its own standards.

Meanwhile, regulators in China and Europe are going forward with tougher standards of their own to curb auto emissions.

"I think the worst case scenario is lost years of progress, which may be critical for climate change," said Paul Cort, an attorney for the environmental advocacy group Earthjustice. "I don't think you can stop the progress that's happening. It's just it could be slowed here in the U.S."

#### **Chemical Watch: Methylene chloride, NMP products remain at major US retailers**

<https://chemicalwatch.com/73844/methylene-chloride-nmp-products-remain-at-major-us-retailers>

**By Lisa Martine Jenkins**

**1/31/2019**

A survey of 42 major US stores found that a majority were still selling methylene chloride or NMP paint strippers, despite the companies' commitments to remove those products from shelves by the end of 2018.

Major home improvement and paint retailers including Lowe's, Sherwin-Williams, the Home Depot, Kelly-Moore and Autozone made commitments to phase out the sale of paint strippers containing methylene chloride and N-methylpyrrolidone (NMP) on the back of overwhelming evidence of the substances' health hazards. These were among at least ten retailers that planned to ban the sale of the products.

However, in the first few weeks of 2019, environment and health advocates at Safer Chemicals Healthy Families visited 42 retailers in order to monitor compliance with the agreement. They found that 62% of the stores they visited were still selling either methylene chloride or NMP paint stripper products. The stores had varying levels of non-compliance with their commitments.

- none of the 12 Lowe's stores surveyed carried products with methylene chloride, but four carried one NMP paint stripper; the company pledged to remove those products when contacted by SCHF;
- none of the seven Sherwin-Williams stores carried NMP-based products, but two stores carried methylene chloride products; a spokesperson for the retailer told SCHF that every store would be re-checked on 18 January, though the company did not respond to a request for confirmation that those checks had been carried out;
- none of the three Kelly-Moore stores visited were still selling paint strippers containing methylene chloride, but one was found to contain NMP; the company's spokesperson told SCHF that they will resend a memo to all Kelly-Moore's stores reminding them of the company's commitment to ban the products;
- all 11 of the Home Depot stores were still selling methylene chloride-based paint strippers and five of 11 also sold NMP-based products; and
- eight of nine AutoZone stores surveyed had methylene chloride products on their shelves, but none had NMP-based paint strippers.

Methylene chloride paint strippers in particular have come under fire from public health advocates because dozens of people have died as a result of using the products. Family members of the victims have joined SCHF and the Vermont Public Interest Research Group to sue the EPA for failure to enact a considered ban on the substance.

The agency issued the original proposal to ban or restrict the two solvents from paint removal applications in early 2017. According to SCHF, at least four people have died from exposure to methylene chloride since then.

Chemical Watch approached all five retailers for comment but had not received a response at the time of publication.



SCHF plans to similarly monitor other retailers that have made the commitment, such as Walmart. It praises those who have stepped up for taking actions that are "likely saving lives" and put pressure on regulators to make these market interventions unnecessary.

"This new in-store research underscores why we need federal action and enforcement by the EPA, to ensure that no toxic paint strippers remain on store shelves," said SCHF in a statement.

Late last month, the EPA submitted for interagency review a final TSCA section 6 rule to regulate methylene chloride paint strippers. But the rule will not address NMP products, and there are signals it will exclude occupational uses.

**Greenwire: Lawmakers press EPA for science behind risk evaluation**

<https://www.eenews.net/greenwire/2019/01/31/stories/1060119177>

**By Cecelia Smith-Schoenwalder, E&E News reporter**

**1/31/2019**

Democrats on the House Energy and Commerce Committee want to see the science behind EPA's draft risk evaluation for a chemical it determined does not present a human health risk.

Chairman Frank Pallone (D-N.J.) and Environment and Climate Change Subcommittee Chairman Paul Tonko (D-N.Y.) wrote yesterday in a letter to acting EPA Administrator Andrew Wheeler that they were "deeply concerned" at the withholding of certain studies used in the draft risk evaluation for pigment violet 29.

Pigment violet 29 is a colorant used in paints, inks and yarns. It was one of the first 10 chemicals chosen by EPA to examine under the reformed Toxic Substances Control Act.

Not releasing the studies "sets a dangerous and unlawful precedent as the EPA continues to work towards completing Risk Evaluations on the current ten and all future chemicals under review," the lawmakers wrote.

The chemical's draft risk evaluation, which was published in November and is EPA's first under the new TSCA, found that it "does not present an unreasonable risk of injury to human health or the environment under the conditions of use."

Pallone and Tonko asked Wheeler to release studies on pigment violet 29 they say EPA labeled as "confidential business information." They also requested all documents and emails related to the decision to label the studies as such.

The lawmakers' letter echoes concerns that environmental health advocates expressed in their comments on the draft risk evaluation.

The Environmental Defense Fund wrote that EPA withheld 24 studies based on "a claim of business confidentiality by the data owners."

The group wrote that the agency's conclusion cannot be supported because "EPA lacks sufficient information to characterize the hazards, exposures, and risks presented by [pigment violet 29]."

EPA did not respond to a request for comment on the lawmakers' letter.

**Huffington Post: New York Just Sued The Trump EPA For Reversing Obama-Era Air Pollution Rule**

[https://www.huffingtonpost.com/entry/epa-smog-pollution-lawsuit\\_us\\_5c5236e8e4b0ca92c6dd111f](https://www.huffingtonpost.com/entry/epa-smog-pollution-lawsuit_us_5c5236e8e4b0ca92c6dd111f)

**By Alexander C. Kaufman**

**1/31/2019**

New York and five other states are suing the Trump administration in a bid to force the Environmental Protection Agency to take stronger steps to curb air pollution that blows across state lines.

The so-called “good neighbor” provision of the Clean Air Act requires the EPA to police air pollution in certain states to ensure that it doesn’t blight downwind states. Under President Barack Obama, the EPA determined the existing standards for limiting smog-forming ozone pollution fell short and needed to be toughened.

Last June, the EPA proposed a rule reversing that determination, a move undercutting more aggressive enforcement of the Clean Air Act. The EPA finalized the rule last month.

On Thursday, newly elected New York Attorney General Letitia James cried foul, filing a lawsuit arguing the EPA is violating the Clean Air Act by “failing to require any further control of power plants and other sources of smog pollution in states upwind” of her state.

The attorneys general of Connecticut, Delaware, Maryland, Massachusetts and New Jersey joined the suit, as did New York City.

“Over two-thirds of New Yorkers regularly breathe unhealthy air due to smog pollution,” James said in a statement. “Yet, the Trump EPA is ignoring the Clean Air Act and refusing to require reductions in the pollution largely responsible for this serious public health risk — pollution that blows into New York from upwind states.”

The EPA did not immediately respond to a request for comment.

At the heart of the lawsuit is a 2015 determination during the Obama administration that found air pollution rules in 24 states failed to “sufficiently and collectively” reduce pollution emissions and threatened states like New York, which has some of the country’s strictest clean air regulations.

Those states targeted in 2015 included Illinois, Michigan, Pennsylvania, Virginia and West Virginia — all upwind of New York.

The suit filed Thursday in the U.S. Court of Appeals of the District of Columbia Circuit argues that the EPA’s 2018 revised determination is “unlawful, arbitrary and capricious.” The suit asks the court to vacate the rule.

The suit marks James’ first major environmental challenge to the White House since she took office this month. Democratic attorneys general, who now control a majority of states’ top law enforcement jobs, have become a major bulwark against the Trump administration’s efforts to delay or roll back nearly 80 environmental regulations. California Attorney General Xavier Becerra has sued the White House over environmental regulations at least two dozen times.

It’s a strategy borrowed from their Republican counterparts. During the Obama administration, GOP attorneys general filed suit so frequently then-Texas Attorney General Greg Abbott — now the state’s governor — was quoted saying, “I go into the office in the morning, I sue Barack Obama, and then I go home.”

Scott Pruitt surged to national fame as Oklahoma’s attorney general for successfully convincing the Supreme Court to block the Clean Power Plan, Obama’s signature climate policy aimed at limiting carbon dioxide emissions from power plants. President Donald Trump, upon taking office, nominated Pruitt to serve as the EPA administrator, much to the delight of those wanting the agency to roll back its regulatory functions. Pruitt filled the post until he resigned in disgrace amid mounting scandals last July.

**E&E News: Second panel sets hearing for hectic week on climate**

<https://www.eenews.net/eedaily/stories/1060119099>

**By Nick Sobczyk, E&E News reporter**

**1/31/2019**

Democrats have been chomping at the bit to take on climate change since they won the House in November, and after a brief delay due to the partial government shutdown, they will finally get their chance next week.

The House Energy and Commerce Subcommittee on Environment and Climate Change will hold its first hearing on the topic Feb. 6, subcommittee Chairman Paul Tonko (D-N.Y.) and full committee Chairman Frank Pallone (D-N.J.) announced in a joint statement last night.

The Natural Resources Committee is planning its own climate hearing the same day — just about 24 hours after the Senate Environment and Public Works Committee is scheduled to vote on the nomination of acting EPA Administrator Andrew Wheeler.

The House hearings have been in the works for weeks, and they will likely mark the first formal shots in the long-brewing battle between Democrats and the Trump administration, which has eagerly pulled back climate regulations and openly denied climate science.

The two House panels will soon have help from Select Committee on the Climate Crisis Chairwoman Kathy Castor (D-Fla.), who has been talking over strategy with Pallone and Tonko.

"It is long past time for this Committee to begin seriously examining how climate change is affecting our communities, environment and economy, and take action to reduce its harmful effects," Pallone and Tonko said in the statement. "The science has been indisputably clear for years now — climate change is real and caused by human activity including burning fossil fuels."

E&C Democrats say the hearing, titled "Time for Action: Addressing the Environmental & Economic Effects of Climate Change," will be the first to specifically address the topic on the committee since 2013. Republicans largely ignored the issue when they controlled the panel.

This month the committee hired an attorney to deal with climate and air issues. Dustin Maghamfar joins the panel from the Justice Department, where he spent more than eight years in the Environment and Natural Resources Division.

Maghamfar, who did not respond to questions last night about his new role, worked in the division's environmental defense and appellate sections, representing federal agencies in dozens of cases involving the Clean Air Act, the Clean Water Act and other laws.

Most recently, he represented the Army Corps of Engineers in litigation over an electric transmission project near historical sites in Virginia. He also defended an Obama-era EPA rule designed to phase out the use of planet-warming hydrofluorocarbons.

A hearing witness list and more information are due in the coming days, but Castor, who sits on Energy and Commerce, said Tonko wants to zero in on "the cost of inaction."

"Over past decades, the dirty fuel folks have created this narrative that climate is too expensive for us to tackle, that the average working person is going to pay a lot more," Castor told reporters yesterday. "But see, they're already paying an enormous amount — air conditioning bills for longer summers, hotter summers, property insurance bills going up, flood insurance, here in the Congress trying to get emergency bills through."

Castor is expecting to get the Democratic roster for the climate change select committee any day now, but she said she's already had meetings with Tonko and Pallone to work out a path forward on climate legislation.

"We're starting to put together that plan: What can we bring to the floor, how we press and work other committees, getting ready for appropriations," she said. "Things like that."

Progressive lawmakers have been helping lead the push for strong action on climate this year. Last night, Axios reported that Rep. Alexandria Ocasio-Cortez (D-N.Y.) and Sen. Ed Markey (D-Mass.) would unveil legislation related to the "Green New Deal."

Reporter Ellen M. Gilmer contributed.

## **Chemical Watch: Congressional Democrats turn up the heat on the EPA**

<https://chemicalwatch.com/73842/congressional-democrats-turn-up-the-heat-on-the-epa>

**By Lisa Martine Jenkins**

**1/31/2019**

As the EPA reopens after being shuttered for four weeks, Democratic legislators have wasted no time in renewing pressure on the agency.

And the focus of their scrutiny continues to fall on per- and polyfluoroalkyl substances (PFASs), after acting administrator Andrew Wheeler signalled in his recent confirmation hearing that he was unlikely to set an enforceable drinking water standard on the controversial class.

### **Answers sought on delayed PFAS study**

This week, leaders of the House Energy and Commerce Committee reiterated a months-old request for more information on the delayed release of an Agency for Toxic Substances and Disease Registry (ATSDR) study on PFAS.

The study, ultimately released in June 2018, was the subject of significant controversy last year after internal documents surfaced suggesting that the EPA and White House were working to slow its publication.

And House Democrats – including Representatives Frank Pallone (D–New Jersey), Diana DeGette (D–Colorado) and Paul Tonko (D–New York) – said this week they are "deeply concerned that these actions appear to indicate that politics, and potentially industry interests, are being placed before public health, particularly in light of reports that EPA has decided to not set a drinking water limit for several toxic chemicals."

The lawmakers have requested that the EPA respond to its original May 2018 information requests by 12 February.

### **Wheeler responds to EPW**

Meanwhile, the Senate Committee on Environment and Public Works (EPW) top Democrat Tom Carper (D–Delaware) highlighted the lack of action on PFASs as one of several areas of concern amplified by Mr Wheeler's responses to questions raised by the EPW during his nomination hearing.

The written answers were released to the public by Mr Carper's office this week, and address several queries related to the class of substances, including the extent to which the EPA will be evaluating state actions and the ATSDR study in its regulatory process.

Mr Wheeler described the study – which floated minimum risk levels (MRLs) for four PFAS chemicals that are lower than EPA's recommended limits for PFOA and PFOS – as "an important step in the process for establishing a national primary drinking water evaluation".

"As a part of the evaluation, the EPA will continue to carefully review the draft ATSDR toxicological profile and will consider all newly available scientific information, including the science used to develop state standards," he added.

Mr Wheeler's statements also included:

- a commitment to make public the results of a National Academy of Sciences (NAS) review of the agency's methodology for collecting information on general chemical safety, as reflected in a letter he sent to the EPW in January 2019;
  - a description of how the partial government shutdown has delayed the agency's continued study of PFASs; and
  - and an assurance that a final rule on methylene chloride paint strippers is in interagency review.
- Nevertheless, the Democrat's concerns persist.

"I urge my colleagues to join me in urging Mr Wheeler to reverse course on these misguided proposals and restore public confidence in EPA's critical mission," Mr Carper wrote.

**E&E News: Lawmakers hopeful they can avert another shutdown**

<https://www.eenews.net/eedaily/stories/1060119085/>

**By George Cahlink, E&E News reporter**

**1/31/2019**

Congressional negotiators are cautiously optimistic that they will reach a deal on border security and new funding for other federal agencies, including EPA and the Interior Department, and avert another government shutdown next month.

Top appropriators yesterday held their first conference talks over the border security and agency funding package since the 35-day federal shutdown ended last week. The 17 lawmakers need a deal by Feb. 15, when current stopgap spending legislation expires.

"Except for Homeland Security, we are very close to agreement on the six appropriations bills. While we have some differences on disaster and relief and recovery. I believe we can come to a speedy agreement there, as well," said House Appropriations Chairwoman Nita Lowey (D-N.Y.), who added that she was "cautiously optimistic" after the meeting.

Congress has passed six of the 12 annual fiscal 2019 spending bills, leaving other agencies operating under a series of stopgap funding bills since Oct. 1, 2018. Among the six unfinished bills are the Interior-EPA, Commerce-Justice-Science, Transportation-Housing and Urban Development, and State-Foreign Operations funding measures.

"I think the six are pretty much settled on. Could someone open them up in a conference? I guess, but I hope they are basically done," said Senate Appropriations Chairman Richard Shelby (R-Ala.), who called yesterday's kickoff talks a "good start."

Late last year, House and Senate appropriators negotiated the six bills but did not formally advance them due to the impasse over border funding. Both parties say they are the versions expected in the package.

The Interior-EPA title would provide \$300 million above current funding levels, giving EPA \$8.8 billion and Interior \$13 billion. It does not contain new policy riders but would maintain current policies that count biomass as carbon neutral and exempt certain agriculture practices from the Clean Water Act.

With the other bills largely settled, lawmakers devoted most of the first conference meeting to discussing Homeland Security spending. There were no signs, however, that the gulf between the parties had narrowed.

Rep. Lucille Roybal-Allard (D-Calif.), chairwoman of the House Homeland Security Appropriations Subcommittee, said she would soon release a public draft of the Democrats' Homeland Security proposal, which would not contain any funding for building a border wall.

Instead, she said, it would focus on hiring more customs officers and expanding the use of technologies to improve border security.

Roybal-Allard also said the request would fully fund a new icebreaker for the Coast Guard, the first for the maritime service since the 1970s. She said the Coast Guard cutter could not be funded if the White House does not relent on its push for \$5.7 billion in border funding.

Senate Republicans did not offer a specific proposal, but several called for a combination of physical barriers, more security personnel and expanded technology. The GOP's starting point appears to be the \$5.7 billion sought by the White House, which emphasizes physical construction of a wall.

President Trump has downplayed the prospect of a deal, saying it has less than a 50-50 chance, and warned he would use emergency powers to build a wall if Congress does not provide funding.

Other conferees offered other topics for the negotiations and more novel approaches to border security.

Sen. Roy Blunt (R-Mo.) suggested expanding the talks to cover budget caps that are due to hit in 2020 and 2021, forcing automatic cuts of 11 percent in defense spending and 9 percent to domestic accounts.

He said the cuts are opposed by both parties and finding ways to ease them could help spur a deal on Homeland Security.

Rep. Henry Cuellar (D-Texas), who represents a border district, said rather than building barriers he wants to cut much of the cane, which he called an "evasive species," growing along the border.

He said smugglers and illegal immigrants frequently hide in the stalks that can grow 20 feet high and that eliminating them would make it easier for U.S. Border Patrol agents to spot them.

While conferees largely sounded a positive tone, there was less comity on the House floor yesterday.

Largely along party lines, the House backed a bill that would give federal workers a 2.6 percent pay raise this year — matching the increase already marked for military personnel.

House Republicans opposed the bill, saying they had not had enough time to review it and noting federal workers were already expected to get a 1.9 percent pay raise.

Also, the chamber failed to pass a nonbinding resolution that would have condemned the use of shutdowns as a negotiating tactic. Republicans balked at the measure that they say cast blame on the White House.

While it had the support of Democrats, the resolution could not gain the two-thirds majority to pass the House on the suspension calendar.

#### **E&E News: Lawmakers introduce water, wildlife, disaster bills**

<https://www.eenews.net/eedaily/stories/1060119071>

**By Courtney Columbus and Ariel Wittenberg, E&E News reporters  
1/31/2019**

House and Senate lawmakers continue introducing energy and environment bills, including one that would affect EPA's power over certain Clean Water Act permits.

A bill from Rep. Bob Gibbs (R-Ohio) would restrict the agency's ability to veto Clean Water Act permits issued by the Army Corps of Engineers.

The "Reform EPA Act," H.R. 843, would only allow EPA to block a project for 30 days after the Army Corps has issued a permit.

The bill takes aim at two controversial actions by the past administration. The Obama EPA proposed restrictions on mining in Alaska's Bristol Bay before the company behind the Pebble mine had submitted a permit application.

Separately, the agency vetoed permits for the Spruce mountaintop-removal mine project in West Virginia years after the Army Corps approved the project.

In a statement, Gibbs said the bill would bring regulatory certainty to industries like mining and homebuilding that often require Clean Water Act permits for their projects.

"Why would entrepreneurs and small business owners risk capital by opening or expanding a business or product requiring a permit when a federal bureaucrat can revoke that permit without warning?" he asked. "It is clear bureaucrats have abused their authority. That is why I introduced the Reform EPA Act."

H.R. 852 by Reps. Brenda Lawrence (D-Mich.), Mike Quigley (D-Ill.) and others would require EPA to create a program to test schools' water for lead contamination. Federal law doesn't currently mandate that schools' drinking water be tested.

"Our children deserve to learn in a safe and healthy learning environment. However, too many of our children are faced with the threat of damaging and irreversible health problems caused by contaminated drinking water in their schools. This is simply unacceptable," Lawrence said in a statement.

#### Natural disasters

Rep. Scott Peters (D-Calif.) has again introduced legislation along with Rep. Elise Stefanik (R-N.Y.) to create an agency to help communities develop natural disaster resilience strategies. It's the fourth time Peters has introduced the legislation. The latest version is H.R. 855.

"In San Diego, we know the cost of wildfires all too well, and northern California just experienced the worst wildfires in state history. Americans across the country are also experiencing disasters with increasing frequency and strength," Peters said in a statement.

"This bill will give communities the tools to plan ahead and increase their resiliency," he said, "which will save lives and reduce costs in the long-run."

#### Resources

Another new bill from Gibbs, H.R. 844, would allow for modified permits for industrial minerals remining operations. Remining is a process of removing remaining coal from abandoned mines.

S. 258 by Sen. Catherine Cortez Masto (D-Nev.) would block oil and gas leasing in the Ruby Mountains Ranger District in Nevada's Humboldt-Toiyabe National Forest.

A draft Forest Service plan obtained last year by an environmental group would allow oil and gas leasing in the Ruby Mountains but prevent surface disturbances (Greenwire, Aug. 3, 2018).

#### Border

S. 263 by Sen. Martin Heinrich (D-N.M.) would require property owners to be fully compensated before the federal government takes possession of their land to build border infrastructure. The measure also outlines the consultation steps that would need to be taken prior to land acquisition.

"Close to 70 percent of land along our southern border belongs to entities other than the federal government," Heinrich said in a statement. "Before any border wall proposal moves forward, we need to mandate consultation with stakeholders, increase transparency, and ensure that landowners are properly compensated before the government takes possession of their property to build new border infrastructure."

California Democratic Sen. Kamala Harris, who has announced she's running for president in 2020, is a co-sponsor of the bill.

Another bill by Heinrich, S. 264, would prevent some elements of border wall construction from taking place on state land and in federal wildlife and wilderness areas along the U.S.-Mexico border.

#### Wildlife

Sens. John Barrasso (R-Wyo.) and Tom Carper (D-Del.), chairman and ranking member of the Environment and Public Works Committee, respectively, reintroduced legislation titled the "Wildlife Innovation and Longevity Driver Act."

It would promote wildlife conservation and help with the management of invasive species. The measure, S. 268, would also help protect endangered species. It would reauthorize the Partners for Fish and Wildlife Program until fiscal 2023.

"The WILD Act is bipartisan legislation to protect threatened wildlife and manage invasive species. This conservation legislation will help combat illegal poaching in America and around the world. Last Congress, the WILD Act passed the Senate unanimously. This Congress, I expect it will be signed into law," Barrasso said in a statement.

Heinrich has floated a bill, S. 261, with support on both sides of the aisle, that would reauthorize the 30-year-old North American Wetlands Conservation Act through fiscal 2024.

"NAWCA ensures that wetlands across the country are conserved and restored. Through partnerships involving government, non-profits, and community groups, this program enables wildlife to thrive," Sen. Lisa Murkowski (R-Alaska) said in a statement. "It's important that we reauthorize NAWCA so we can continue its success in Alaska and elsewhere."

Other bills introduced include:

- S. 253 from Sen. Susan Collins (R-Maine) to coordinate the provision of energy retrofitting assistance to schools.
- H.R. 830 from Rep. John Garamendi (D-Calif.) to allow farmers to receive discounts under the National Flood Insurance Program and allow the repair, expansion and construction, without elevation, of agricultural structures in certain areas with a high risk of flooding.
- H.R. 864, also from Garamendi, to increase federal enforcement of wildlife trafficking laws.

#### **Reuters: Waterkeeper groups sue EPA for missing drinking-water deadlines**

<https://www.reuters.com/article/drinking-water-epa/waterkeeper-groups-sue-epa-for-missing-drinking-water-deadlines-idUSL1N1ZV0IH>

**By Barbara Grzincic**

**1/31/2019**

The Environmental Protection Agency is putting public health and safety at risk by ignoring deadlines to review and revise standards for chromium, solvents, the Legionella bacteria and other pathogens in the nation's drinking water, a trio of conservation groups alleged on Wednesday.

The nonprofit Waterkeeper Alliance filed suit in federal court in Manhattan along with two of its 300-plus members, the Maryland-based Waterkeepers Chesapeake and the California Coastkeeper Alliance. They seek to force the EPA to comply with deadlines that Congress wrote into the Safe Drinking Water Act in 1996, after an outbreak of water-borne illnesses caused more than 100 deaths nationwide. The law sets a rolling schedule for EPA to identify contaminants in public tap water, set initial standards and review those standards, generally every six years.

To read the full story on Westlaw Practitioner Insights, click here: [bit.ly/2BmMOir](https://bit.ly/2BmMOir)

#### **E&E News: Sunoco hit with \$5.4M penalty for oil spills**

<https://www.eenews.net/energywire/stories/1060119095>

**By Joel Kirkland, E&E News reporter**

**1/31/2019**

Sunoco Pipeline LP has agreed to pay a \$5.4 million civil penalty to settle federal and state claims tied to oil spills in Texas, Louisiana and Oklahoma.



The Justice Department, EPA and the Louisiana Department of Environmental Quality jointly announced the proposed consent decree yesterday. The enforcement agreement, which requires a judge's approval, requires Sunoco to remedy pipeline defects and corrosion problems that resulted in violations of the Clean Water Act and oil spills in 2013, 2014 and 2015.

DOJ has touted federal environmental enforcement action that comes as a result of collaboration with state agencies. But two years into the Trump administration, DOJ and EPA are also facing criticism that enforcement penalties targeting polluters have been significantly weaker than past administrations.

"This excellent result shows how a strong federal and state partnership can bring about effective environmental enforcement to protect local communities in these states," said Jeffrey Bossert Clark, assistant attorney general in DOJ's Environment and Natural Resources Division.

Under the agreement, Sunoco is required to ensure corrosion doesn't become an issue in out-of-service pipelines. Corrosion was responsible for all three spills, including a 2014 spill of about 4,500 barrels of oil near Mooringsport, La. The spill flowed to a tributary of Caddo Lake, according to the enforcement complaint.

Mid-Valley Pipeline Co., which is part of Sunoco's family of pipelines, owned the pipeline segment in Louisiana.

A spill in 2013 dumped 550 barrels in Tyler County, Texas; and another one in 2015 spilled 40 barrels in Grant County, Okla.

The spill in Oklahoma flowed into two creeks that ultimately make their way to the Arkansas River.

The DOJ announcement said the \$5 million federal portion of the penalty will go into the federal Oil Spill Liability Trust Fund, which is managed by the Coast Guard's National Pollution Funds Center.

Sunoco, a subsidiary of Dallas-based Energy Transfer LP, has also found itself in the hot seat in Pennsylvania. State officials have been investigating a sinkhole that exposed the 1930s-era Mariner East 1 pipeline in the Philadelphia suburbs. Officials forced the pipeline to shut down until issues around the transportation of natural gas liquids through the line are resolved.

#### **E&E News: N.J. governor pushes for broader ban in Delaware River Basin**

<https://www.eenews.net/energywire/stories/1060119065>

**By Mike Lee, E&E News reporter**

**1/31/2019**

Democratic New Jersey Gov. Phil Murphy is urging his fellow governors in Pennsylvania, New York and Delaware to support a complete ban on hydraulic fracturing and associated activities in the watershed their states share.

The Delaware River Basin Commission, which is governed by the four governors and the Army Corps of Engineers, has been working since 2010 on regulations to govern fracking in the 13,500-square-mile watershed. The most recent proposal, written in 2017, would ban hydraulic fracturing, or fracking, but allow companies to dispose of fracking wastewater within the basin (Energywire, April 6, 2018).

Fracking waste can contain drilling chemicals and naturally occurring hazardous materials, Murphy said in a letter. And an EPA study in 2016 said that there isn't evidence to tell how much pollution fracking causes because so much of the information on fracturing chemicals is confidential.

"Therefore, prohibiting all fracking activity in the Basin is vital to avoid injury and preserve the waters of the Basin and protect public health," Murphy wrote.

The commission isn't scheduled to discuss the fracking regulations at either of its next two meetings in February or March, a spokeswoman said.

Fracking, the process of breaking up rock formations with water and chemicals, has allowed companies to produce oil and gas from formations like the Marcellus Shale, which extends into the Delaware River Basin in parts of Pennsylvania and New York.

It's unclear how the other members of the commission will respond. The Trump administration, which controls the Army Corps, has embraced fracking as part of its "America First" energy policy. Pennsylvania Gov. Tom Wolf (D) has tried to crack down on the gas industry's side effects but hasn't banned the industry.

New York Gov. Andrew Cuomo (D) banned high-volume fracking in 2014 but voted in favor of the DRBC's current proposal, including allowing waste disposal in the basin. Delaware Gov. John Carney (D) also voted for the current proposal.

### **Inside EPA: EPA Faces New State Pressure To Tighten Assessment Of PFAS Risks**

<https://insideepa.com/daily-news/epa-faces-new-state-pressure-tighten-assessment-pfas-risks>

**By Maria Hegstad**

**1/30/2019**

EPA is facing pressure from states and water utilities to tighten its assessment of the risks posed by a pair of per- and polyfluoroalkyl substances (PFAS) substances, known as GenX and PFBS, intensifying pressure on the agency to step up its oversight of the broad class of chemicals in part as a way to harmonize state standards.

In recent comments, states including Michigan and Minnesota questioned aspects of EPA's draft assessments of the two substances and urged the agency to provide better explanations for decisions that made the assessments less strict than EPA could have been.

"These two documents come at a critical time for environmental and epidemiological [PFAS] investigations, not only in Michigan where 37 sites of PFAS contamination have been identified, but across the nation," states Jan. 22 comments from the Michigan Department of Environmental Quality (MDEQ).

Michigan, as well as Minnesota also questioned some of the methodological and other choices that EPA made in the draft analyses that make the resulting risk estimates less stringent.

As one example, Michigan questions EPA's use of uncertainty factors (UFs), default factors used to address known areas of uncertainty in chemical analyses, generally for non-cancer effects.

Such comments come as EPA is facing a firestorm of criticism over its apparent decision to refrain from setting an enforceable drinking water standard for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), two of the most ubiquitous PFAS substances, though as Inside EPA has reported, the agency is weighing a series of other steps.

For example, Sen. Shelley Moore Capito (R-WV), a member of the Senate environment committee, has voiced concerns about EPA's decision, raising doubts that acting EPA Administration Andrew Wheeler's nomination will clear the closely divided panel.

EPA's draft assessments for the two substances, released last year, appeared to continue a patchwork approach that has developed as states have crafted their own risk and regulatory standards in the absence of EPA action. For example, EPA's GenX assessment adopted stricter values that North Carolina recently adopted while its values for PFBS were weaker than those Minnesota adopted.

House Democrats have already signaled they plan to conduct vigorous oversight of how EPA approved GenX and other second generation PFAS.

But now states are urging EPA to strengthen its assessment of the two substances as a way to harmonize approaches.

“It is understood that the PFAS family of emerging chemical contaminants of public health concern have not been fully studied. ... Federal PFAS toxicity benchmarks can facilitate a more harmonized national risk assessment standard, reducing inconsistencies that have been established by multiple agencies with different priorities,” Michigan says in its comments.

Michigan also urges EPA to fund or conduct further research into the chemicals' toxicity, arguing that EPA has only limited data available, and much of it is proprietary, conducted by its manufacturers. “The majority of [the GenX] data was submitted to EPA by DuPont under the Toxic Substances Control Act [TSCA]. As such, these studies and data therein did not undergo the robust scientific peer review typical of studies in the published literature,” the state says.

MDEQ writes that the draft documents “identified multiple data needs for these two PFAS,” and suggests that EPA conduct “a focused literature review in the likelihood that studies that address these data gaps are newly available before finalization of the toxicity value documents.”

### Drinking Water Standards

Michigan, like many states and lawmakers, also calls on EPA to address uncertainty and variation in jurisdictions' drinking water standards by setting national standards based on the assessments, as well as conducting assessments and setting standards for other members of the PFAS family.

“MDEQ also encourages the EPA to take the next appropriate steps and use these GenX and PFBS toxicity values to conduct comprehensive risk assessments and apply this information in establishing national drinking water standards protective of all users of this resource. In addition, the MDEQ supports the EPA in the development of toxicity values for additional members of the PFAS chemical family commonly used and found in the environment. Adoption of the final GenX and PFBS toxicity values by the EPA [IRIS] and the subsequent development of any appropriate Regional Screening Levels (RSLs) would also facilitate addressing environmental releases of these chemicals.”

Drinking water utilities also say EPA is not doing enough to assess and address PFAS risks. The Cape Fear Public Utility Authority (CFPUA), a water utility in southeastern North Carolina that utilizes the Cape Fear River, which in recent years has been found to contain GenX, welcomes the draft assessments but says in its comments that drinking water providers need testing capabilities, regulatory guidance, and treatment goals for comprehensive PFAS reduction. Focusing on GenX, PFBS, PFOA, and PFOS, without considering other PFAS, is not sufficient to protect drinking water supplies and the environment. This information would allow utilities to assess their current treatment capabilities and design effective upgrades.”

CFPUA calls on EPA to make “draft toxicity assessments ... available for all additional PFAS that have been found in the Cape Fear River. Existing toxicity assessments must be updated to include the impact of exposure to multiple PFAS compounds at once. ... EPA should continue its risk assessments for a much wider range of PFAS compounds, and work to quickly and effectively turn that information into a regulatory framework protective of public health and the environment.”

The Association of State Drinking Water Administrators (ASDWA) makes similar recommendations in its Jan. 22 comments, before adding that EPA could better choose PFAS chemicals for assessment that are more commonly found across the country before beginning future assessments. The group urges EPA to “move forward in a timely manner to assess the health risks from additional PFAS ... and that any future toxicity assessments for PFAS and/or unregulated compounds be prioritized through a stakeholder process.”

The groups recommends that such a prioritization process “should be based on criteria that consider the prevalence of the compounds throughout the entire U.S., and potential health impacts, and that includes stakeholder engagement. ASDWA believes that the occurrence and prevalence of GenX and PFBS are not likely to be significant from a public

health perspective for many states and water systems across the nation, and that perhaps it may have been more helpful if EPA had instead conducted these toxicity assessments for other PFAS compounds such as PFNA, PFHxS, and PFHpA.”